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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,444	11/14/2003	Clifford D. Bennett	442005-00108	9620
7590	02/28/2008		EXAMINER	
Mark P. Levy Thompson Hine LLP P.O. Box 8801 Dayton, OH 45401-8801			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	
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			02/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/713,444	BENNETT, CLIFFORD D.	
	Examiner	Art Unit	
	Jessica Laux	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 January 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17, 21 and 22 is/are pending in the application.

4a) Of the above claim(s) 15, 21 and 22 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-14, 16-17 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

This action is in response to the after final amendment dated 01/17/2008. The amendment has been entered and an examination of the claims is presented below. Accordingly this action is NON-FINAL.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

Claim 1 is objected to because of the following informalities: line 7 recites the limitation "the concrete form"; however the concrete form has not been positively claimed. the claim should appropriately read "a concrete form". Appropriate correction is required.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 8, 10-12, 14, 17 rejected under 35 U.S.C. 102(b) as being anticipated by Heneveld (6041947).

Regarding claims 1, 3-6, 8, 10-12, 17: Heneveld discloses a multi-level chair capable of supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, comprising:

A nestably stackable inverted V-shaped body including a pair of legs extending downwardly from an apex of said body (as best seen in figures 1, 6).

said body including a plurality of partially enclosed receptacles (14, 24) adapted to receive post-tension reinforcement cable after final placement of the chair, the plurality of receptacles comprising at least three identically sized receptacles, positioned at different heights, the heights being equally spaced apart heights, from the bottom of the concrete form (as seen in figures 1, 6);

 wherein said multiple receptacles of one of said legs are positioned at different heights with respect to said multiple receptacles of the other of said legs (as seen in figures 1, 6);

 wherein each of said receptacles is adapted to support a post-tension reinforcement cable of a predetermined diameter in an arcuate orientation above the bottom of the concrete form.

Regarding claim 14: The multi-level chair of claim 12 wherein each of said legs terminates in a foot (11, 21).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7, 9, 13, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heneveld (6041947).

Regarding claim 2, 7, 13: Heneveld discloses the multi-level chair of the claims above, but does not expressly disclose the material.

However, it appears to be matter of design choice to a person of ordinary skill in the art to use an injection molded plastic as the material of the chair as it is a material in common use in the art because of its ease in manufacture, cost and lightweight and ease of use. Further, it appears that the device of Heneveld or applicants invention would perform equally well with any of several various material choices one of which is plastic as it is noted that applicant discloses in the specification that any material would be acceptable (specification page 4).

Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have modified Heneveld such that the material was plastic because such a modification would have been considered a mere design consideration which fails to patentable distinguish over Heneveld.

Regarding claims 9, 16: Heneveld discloses the multi-level chair of claims 6 or 12 as above, but is silent as to the dimension of the spacing between receptacles.

However, applicant has not disclosed that having the receptacles spaces $\frac{1}{4}$ or $\frac{1}{2}$ inches apart solves any stated problem or is for any particular purpose or provides an advantage. Further it is noted that applicant states in the specification, pages 8-9 that $\frac{1}{4}$ inch is merely an example of a dimension but that any desired distance may be used (there is no express disclosure in the specification supporting $\frac{1}{2}$ inch). Moreover, it appears that the chair and receptacles of Heneveld, or applicant's invention, would perform equally well with the receptacles spaced any distance. Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have modified Heneveld such that the receptacles be spaced $\frac{1}{4}$ or $\frac{1}{2}$

inches apart because such a modification would have been considered a mere design consideration which fails to patentable distinguish over Heneveld.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633

/J. L./
Examiner, Art Unit 3635
02/04/2008

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